

Ahearn



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Container Products Corporation--Request for
Reconsideration

File: B-234368.2

Date: October 18, 1989

DIGEST

Request for reconsideration is denied where request presents no alleged factual or legal errors warranting reversal, but merely disagrees with original decision or restates arguments considered, and rejected, by the General Accounting Office in denying the original protest.

DECISION

Container Products Corporation requests reconsideration of our decision in Container Products Corp., B-234368, June 8, 1989, 89-1 CPD ¶ 536, wherein we denied its protest of a subcontract award to Voyale Corporation, under solicitation No. 8E0400, for a supply of steel containers with lids for disposal of sludge waste. The solicitation was issued by Martin Marretta Energy Systems, Inc., a prime contractor operating and managing the Department of Energy's (DOE) Portsmouth Gaseous Diffusion Plant in Piketon, Ohio.

We deny the request for reconsideration.

The solicitation had required that the containers be "strong tight" and in compliance with Department of Transportation requirements in 49 C.F.R. § 173 for F-001 or F-002 hazardous-type waste. In its protest, Container Products maintained that one of the F-001 hazardous wastes listed in the regulations, chlorobenzene, designated as a flammable liquid, becomes a flammable solid when mixed with sludge. As containers for flammable solids must meet certain tests in addition to the general requirements for containers in the DOT regulations, Container Products claimed that it read the solicitation as requiring containers meeting these flammable solid standards and argued that Voyale's offered container would not meet the drop, vibration, and air/hydrostatic pressure tests for flammable solids, and thus should have been rejected. DOE had responded that Container

046837/139827

Products' argument was irrelevant because, although the solicitation did not so specify, the procured containers in fact were to hold only sludge contaminated with trichloroethylene (TCE), which is not flammable; thus, it was not necessary for the containers to meet the flammable solid tests.

In our June 8 decision, we held that the record did not clearly establish that the flammable testing requirements were applicable, and that the awardee's offered containers thus were properly accepted even though they did not meet those requirements. We also held that, in any case, the protester had not been competitively prejudiced, since the agency reasonably had found the protesters offered containers also did not comply with the flammable solid testing requirements.

In its request for reconsideration, Container Products argues that our prior decision erroneously held that the solicitation did not require compliance with the flammable solid testing requirements and ignored the clear indication in the record that its offered container would meet those requirements. On the first issue, the protester contends that the agency recognized that the flammable solid standards were applicable because the agency in its report on the protest conceded both the flammability of liquid chlorobenzene and the requirements for packaging flammable solids and did not contest that a flammable liquid when mixed with sludge creates a flammable solid. Further, the protester contends that the agency recognized that the solicitation could be read as requiring a container capable of meeting the flammable solid standards.

We find no basis for reversing our decision. As we stated in our decision, it was not clear from the record that chlorobenzene when mixed with sludge becomes a flammable solid. While the regulations list chlorobenzene as a flammable liquid, they contain no guidance on whether a flammable solid will result when the chemical is in a sludge mixture and Container Products presented no documentation supporting its position. The burden is on the protester to present evidence supporting its position and Container Products simply did not do that in its protest. The agency's recognition of the flammability of liquid chlorobenzene and the additional testing standards for containment of flammable solids is in no way determinative of whether a flammable solid will result when the flammable liquid chlorobenzene is mixed in sludge.

Further, the protester has misstated the agency's position regarding whether the solicitation required a container

capable of meeting the flammable solid standards. Nowhere in the agency report did the agency agree with the protester that the solicitation reasonably could be read as requiring a container capable of meeting those testing requirements; rather, the agency stated only that if Container Products read the solicitation as potentially requiring a container capable of meeting the requirements for holding a flammable solid, the firm should have sought clarification of this point prior to the closing date for receipt of offers.

While Container Products obviously disagrees with our finding that the record was inconclusive as to whether chlorobenzene becomes a flammable solid when mixed in sludge, in which case the higher standards for flammable solids would apply, the protester has presented no evidence that persuades us that our conclusion was incorrect. Under our Bid Protest Regulations, we will reconsider a bid protest decision only where there is a showing that our decision may have been based on errors of fact or law, or where the protester presents arguments or information not previously considered that may warrant reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1989). Mere disagreement with our decision or repetition of arguments made during the original protest does not meet this standard. See Container Products Corp.--Request for Recon., B-232953.2, Mar. 8, 1989, 89-1 CPD ¶ 254.

Given our conclusion that our prior decision correctly found no basis for applying the additional testing requirements to reject Voyale's bid, we need not consider Container Products' argument that its own containers met those requirements.

The request for reconsideration is denied.


James F. Hinchman
General Counsel